

APPEAL NO. 031656
FILED AUGUST 14, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 27, 2003. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) average weekly wage (AWW) is \$586.69. The claimant appealed the hearing officer's determination and asserts that the AWW is \$693.00 based on the "similar employee" or "fair, just and reasonable" methods. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Section 408.041(a) provides that a full-time employee's AWW shall be determined by dividing the wages from the 13 weeks preceding the compensable injury, divided by 13. If a full-time employee did not work for the employer for the 13 weeks preceding the compensable injury, the AWW is calculated using "the usual wage that the employer pays a similar employee for similar services." Section 408.041(b)(1); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 128.3(f) (Rule 128.3(f)). If neither of the foregoing methods can "reasonably be applied," the AWW is determined "by any method that the [Texas Workers' Compensation Commission] considers fair, just, and reasonable to all parties and consistent with the methods established under [the 1989 Act]." Section 408.041(c); Rule 128.3(g). The hearing officer, applying Section 408.041(c) and Rule 128.3(g), determined that the claimant's AWW is \$586.69, which reflects the wages actually earned by the claimant in the 4 weeks preceding the injury, divided by 4. The hearing officer omitted one week, December 25 through December 31, 2001, in which the claimant did not earn wages because the employer shut down for the Christmas holidays. See Texas Workers' Compensation Commission Appeal No. 010476, decided April 5, 2001 (The Appeals Panel affirmed the hearing officer's AWW determination in which he applied the fair, just, and reasonable method for AWW calculation by omitting the weeks in which the claimant's employment was reduced by the employer's holiday shutdown and dividing the remaining earnings by the remaining weeks). Under these facts, we perceive no error in the hearing officer's AWW determination.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **EMPLOYER'S GENERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT COSGROVE RAMSOWER
1601 ELM STREET, SUITE 1600
DALLAS, TEXAS 75221.**

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge